COURT'S ORDER WHETHER THE CASE IS OR IS NOT APPROVED FOR REPORTING
[Chapter VIII, Rule 32(2) (b)]
Description of Case

S.T.R. No 15 of 2003 **decided on: 25th July, 2005**

S.T. R. No. 15 of 2003
(Old No. 1138 of 1992)

Commissioner of Sales Tax
U.P. Lucknow. ……..Applicant/Revisionist

Vs.

M/S Sevak Ram
Raja Ram
Vikas Nagar, Dehradun ……..Opposite Party

Learned Standing Counsel for the Revisionist.
None for the Respondent.

A.F.R. (Approved for Reporting)
Not approved for reporting

Date: 25.07.2005

(Hon. Mr. Justice Prafulla C. Pant)

Judgment Reserved

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

S.T. R No. 15 of 2003
(Old No. 1138 of 1992)

Commissioner of Sales Tax
U.P. Lucknow. ……..Applicant/Revisionist

Vs.

M/S Sevak Ram
Raja Ram
Vikas Nagar, Dehradun ……..Opposite Party

Learned Standing Counsel for the Revisionist.
Sri S.K. Posti, learned Counsel for the assessee.

Hon'ble Prafulla C. Pant, J.

Heard learned Standing Counsel on behalf of the revisionist and Shri S.K. Posti, learned counsel for the assessee.

This Sales Tax Revision, preferred under Section 11(1) of the U.P. Sales Tax Act, 1948, was filed before the Allahabad High Court in the year 1992 and is received on transfer, by this Court, under Section 35 of U.P. Reorganisation Act, 2000, for its disposal. The revision is directed against the order dated 28.03.1992, passed by Sales Tax Tribunal, Dehradun.

The following question of law is required to be answered in this revision:-

"Whether on the facts and circumstances of the case, the Sales Tax Tribunal was legally justified to hold that the dealer has made direct purchases of Sonth from the farmers inspite the fact that the dealer purchases sonth from his selling agency in respect of which he issued 6 R to farmers and 9R to himself?"

The assessee is a dealer who deals in Kirana, Oil seed, Cereals and sun hemp etc for the assessment year 1984-85. It appears that the department issued a notice under Section 21 of U.P. Sales Tax Act, 1948, for re-assessment on the ground that 'Sonth' (dry ginger), purchased by the dealer, got escaped in the earlier assessment. The assessee's case is that the liability to pay on the turnover relating to dry ginger either lies with the importer or with the manufacturer. The assessee is neither of the two. It was alleged by the assessee that he purchased dry ginger through mandi samiti, as such, no tax was liable on such turnover. On the other hand, the department alleges that the first sale has been made by the assessee to himself, as there is only one account.

In C.V. Rama Swamy Goundar Sons Vs. Deputy Commercial Tax Officer, 1990 (77) S.T.C. Pg. 68, it has been held that if the dealer has acted only as an intermediary, by receiving goods from the seller and made over to the purchaser, he is not liable to tax, as the sale is not completed when he received the items from the cultivators. In Commissioner Sales Tax Vs. Sunil Kumar 1989 U.P.T.C. Pg. 395, it has been held that in the business of chillies directly purchased from farmers, if the assessee is neither importer nor manufacturer, he is not liable to tax. In the present case also, what assessee has done is this he received dry ginger from farmers through mandi samiti, by issuing 6 R in the name of cultivators and 9 R in his own name. As such, that he has acted as selling agent of the cultivators. Learned counsel for the applicant, argued that the act on the part of the assessee is a sale under Section 2 (ee). I am unable to accept said submission for the reason that Section 2(ee),defines manufacturer and provides that in relation to any goods, the manufacturer means the dealer who makes first sale of such goods in the State after they are manufactured. Since sale could not have been made to himself by the assessee as such, it cannot be said to be the first

sale in the state. Therefore, the assessee, cannot be said to be the manufacturer. That being so, there appears no error in the impugned order passed by the learned Sales Tax Tribunal that the assessee was not liable to pay tax on 'Sonth', purchased from cultivators and sent directly outside U.P. to other dealers. It is significant to mention here that there was no purchase tax on the purchase of 'Sonth' for the assessment year in question.

In view of above discussion, the question of law is answered in negative, that is, in favour of the assessee. The revision is dismissed.

(Prafulla C. Pant, J.)

Dt:25.07.2008
Sweta